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MFR

15 August 1978

OLC: 78-2948

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting with State Department Representatives on Executive Branch Relations with the Senate Foreign Relations Subcommittee on International Operations

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1. [] On 15 August 1978 the undersigned along with [] met with Theodore Heavner, Office of Operations Policy, Bureau of Intelligence and Research, Department of State, and Laurence Storch, of the State Department Legal Adviser's office, at their request to discuss relations with the Senate Foreign Relations Subcommittee on International Operations. The State Department representatives specifically wanted to discuss procedures for implementing the understanding on the "third agency rule" worked out at the 3 August Senate-House Conference on the State Department Authorization bill. Heavner and Storch provided us with a letter from Subcommittee Chairman George McGovern (D., S. Dak.) to the Director of State's Bureau of Intelligence and Research which outlines the Chairman's understanding of how the agreement reached at the House-Senate conference will apply in practice. Heavner and Storch also discussed with us their draft reply to that letter. We agreed that the following procedures would be used when the State Department encounters in its files CIA documents related to requests for information by the International Operations Subcommittee:

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- - A list of the documents will be provided to OLC.
- - The Subcommittee will be informed that the Agency has been provided with such a list, but the documents will not be specifically identified to the Subcommittee. (See attached memorandum from NSC Staff Secretary Christine Dodson.)
- - The Agency will communicate directly with the Subcommittee as to whether and how the documents will be made available.

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2. [] In effect, this means that any documents we make available will be in accordance with the Memorandum of Understanding between the DCI and the Subcommittee (i.e., review and note-taking by staffers Glennon and Ritch at Headquarters). Unlike the Department of State, we will not normally be turning any of our documents over to the Subcommittee.

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3. [] Heavner and Storch gave us a list of CIA documents pertaining to the Nationalist Chinese intelligence service, copies of which

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are in State's files. We agreed that we would coordinate with State on the wording of the letter we will send to the Subcommittee concerning these documents.

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4. [] Following the State representatives' departure, the undersigned called Ron Heller, of the Federal Bureau of Investigation's Legislative Affairs Office, to confirm that the agreement on procedures that had just been reached between State and CIA was essentially the same as one previously worked out between State and the Bureau. We agreed that the same procedures would be used for FBI-CIA dealings on Subcommittee requests for documents.

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[]
Assistant Legislative Counsel

Attachments

Distribution:

Original - OLC Subject w/att.

1 - PCS/LOC [] w/att.

1 - OLC Chrono w/o att.

OLC:GMC:clm (16 August 1978)

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Basic Authority for the Department of State

Public Law 84-885 [S. 2569], 70 Stat. 890, approved August 1, 1956, as amended by Public Law 86-707 [H.R. 7758], 74 Stat. 600, approved September 6, 1960; Public Law 86-723 [S. 2533], 74 Stat. 847, approved September 8, 1960; Public Law 87-565 [S. 2996], 76 Stat. 263, approved August 1, 1962; Public Law 88-205 [H.R. 7885], 77 Stat. 391, approved December 16, 1963; Public Law 92-226 [S. 2819], 86 Stat. 20, approved February 7, 1972; Public Law 92-352 [H.R. 14734], 86 Stat. 469, approved July 13, 1972; Public Law 93-475 [S. 3473], 88 Stat. 1439, approved October 26, 1974; Public Law 94-141 [S. 1517], 89 Stat. 756, approved November 29, 1975; Public Law 94-350 [S. 3168], 90 Stat. 823, approved July 12, 1976; Public Law 95-45 [H.R. 5040], 91 Stat. 221, approved June 15, 1977; and by Public Law 95-405 [H.R. 6689], 91 Stat. 844, approved August 17, 1977.

AN ACT To provide certain basic authority for the Department of State.

SEC. 15.

(b) The Department of State shall keep the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives fully and currently informed with respect to all activities and responsibilities within the jurisdiction of these committees. Any Federal department, agency, or independent establishment shall furnish any information requested by either such committee relating to any such activity or responsibility.

The Senate receded from its amendment with the understanding of the conferees that that amendment was unnecessary in view of the law's requirement that "any" information be furnished. Any information, the conferees believe, includes information derived from a third agency. The conferees stress that the so-called "third agency rule" may not, therefore, be used as an impediment to the timely furnishing of information requested by these congressional committees. The Executive Branch assures us that the rule will be used as intended and not as a tool to intentionally thwart congressional inquiry or otherwise delay such legitimate processes. Specifically, the conferees understand that, in the event any of the requested information has been supplied to such department, agency or independent establishment by another such entity, such department, agency or independent establishment shall (1) immediately inform the originating entity and request that entity's permission to release such documents; and (2) immediately inform the requesting committee that the originating entity has been asked for permission to release such information to the requesting committee. If the originating entity denies permission to such department, agency or independent establishment, for the release of such items of information, the originating entity shall so inform the requesting committee, describing the items of information whose release has been denied.

The conferees intend that the procedure described above constitute the advice sought by Secretary of State Vance on August 2 regarding a means of resolving difficulties confronted by these committees with respect to the "third agency rule."

Agreed and Accepted

ACTION: L

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NATIONAL SECURITY COUNCIL

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WASHINGTON, D.C. 20505

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MEMORANDUM FOR:

Mr. Peter Tarnoff
Executive Secretary
Department of State

SUBJECT: The "Third Agency Rule" (S/S 7807372)

Your memorandum of April 13, 1978 requested clarification of whether the Department of State is obliged to provide to the Congress lists of classified documents that originated in another agency.

On August 3, 1978, the Senate conferees at the House-Senate conference on the State Department Authorization Bill receded from their position that the "third agency rule" be abolished. Instead, conference report language was adopted that still permits an agency to seek the concurrence of the original classifying agency prior to releasing any items of information that originated in the latter, "third" agency. The term "items of information" was understood to apply both to classified documents and lists of classified documents.

The conferees stressed that this procedure should not be employed to thwart Congressional inquiry or to delay unduly access to the requested information. In that vein, it was agreed that if the originating agency denies permission to release any items of information, that agency is obliged to notify the Congressional requestor of this determination, including in its notification a description of the items of information whose release has been denied.

The direct answer to your inquiry, therefore, is that the "third agency rule" applies to both classified documents and lists of classified documents, each of which may be provided to the Congress only by, or with the concurrence of, the originating agency.



Christine Dodson
Staff Secretary

for
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FRANK CHURCH, IDAHO
CLAYTON PELL, R.I.
GEORGE MCCOY, S. DAK.
DICK CLARK, IOWA
JOSEPH R. BIDEN, JR., DEL.
JOHN GLENN, OHIO
RICHARD (DICK) STONE, FLA.
PAUL S. SARBANES, MD.
MURIEL HUMPHREY, MINN.

CLIFFORD P. CASE, N.J.
JAMES D. PEARSON, ILL.
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ROBERT P. GRIFFIN, MICH.
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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, D.C. 20510

NORVILL JONES, CHIEF OF STAFF
ASNER E. KENDRICK, CHIEF CLERK

August 11, 1978

The Honorable William G. Bowdler
Director
Bureau of Intelligence and Research
Department of State
Washington, D.C. 20520

Dear Mr. Ambassador:

Thank you for your letter of July 25 designating Mr. Theodore J. Heavner as the Department's officer for liaison with the Subcommittee during its inquiry concerning the activities of foreign intelligence agencies in the United States. In the future, the Subcommittee's requests for information will be conveyed to Mr. Heavner by either Mr. Ritch or Mr. Glennon of the Committee staff.

I appreciate your expressed intent to handle the Subcommittee's requests expeditiously. Thus far in this investigation the Subcommittee has encountered substantial difficulty because of invocation of the so-called "third-agency rule." As you may know, the Senate recently approved, as a part of the Foreign Relations Authorization Act for fiscal year 1979, a provision designed to reiterate that section 15(b) of the Basic Authority of the Department of State applies to all information sought by this Committee, including information derived from a third agency. That provision was dropped in conference only because the conferees determined that such an amendment was unnecessary inasmuch as section 15(b) already requires the transmittal of "third-agency" information. The Joint Statement of the Managers provides as follows:

The Senate receded from its amendment with the understanding of the conferees that that amendment was unnecessary in view of the law's requirement that "any" information be furnished. Any information, the conferees believe, includes information derived from a third agency. The conferees stress that the so-called "third-agency rule" may not, therefore, be used as an impediment to the timely furnishing of information requested by these congressional committees.

I would expect the procedures set forth in that same portion of the Joint Statement to be implemented fully in response to requests by the Subcommittee for third-agency information. Specifically, I anticipate that, in response to any such request, the Department of State will immediately request the third agency to release such information to the Subcommittee, while simultaneously informing the Subcommittee that the secondary request has been made. This procedure was worked out with representatives of the Department of State, the Central Intelligence Agency, and the National Security Council, and I believe its effective implementation to be of critical importance to the Subcommittee's investigation.

Over the next several weeks, I expect that the investigation will be moving more rapidly. Before we move into this phase, however, I believe it would be useful for both the Department and the Subcommittee to review what ground has been covered thus far. Accordingly, I request that you compile a list of (1) all documents made available to the Subcommittee to this point; (2) all "third-agency" documents in the files of the Department relevant to the inquiry which have not yet been made available to the Subcommittee; and (3) with respect to each such item, an entry indicating whether the release of that document has been requested by the ~~originating entity~~ *Department* and, if so, such entity's response. Pursuant to the procedure set forth in the Joint Statement, only item (1) need now be transmitted; if, however, objection is made on the part of any such third agencies, items (2) and (3) would then be transmitted.

I have already requested that the FBI provide the Subcommittee with information relative to its inquiry regarding the concurrence or non-concurrence of the Department in connection with the surveillance (electronic or otherwise) of persons engaged in activities germane to this investigation. I would request that the Department immediately convey its consent to the FBI to release to the Subcommittee any information in its possession with respect to these matters. I would, in addition, ask that the Department review its own files and make available to the Subcommittee any documents relating to any such surveillance undertaken or terminated on or after January 1, 1970.

I trust that Mr. Ritch or Mr. Glennon can answer for Mr. Heavner any questions you may have on this or any other request of the Subcommittee.

Again, I appreciate your cooperation and look forward to working with you.

Sincerely yours



George McGovern
Chairman, Subcommittee on
International Operations